IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5609 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRA M. KANSARA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5609 of 2003

MR PK JANI for Petitioner

MR KT DAVE A.P.P. for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/12/2003

ORAL JUDGEMENT

Rule. Mr. K.T. Dave learned A.P.P. waives service of rule on behalf of respondent - State.

2. The applicant is a lawyer by profession. He has approached this Court for obtaining relief under Section 482 of Criminal Procedure Code, 1973 and for expunction of remarks that have been made against him in the judgment delivered by the learned Additional Sessions Judge, Fast Track Court No.3, Bharuch in Sessions Case no. 29 of 2002 dated 27th February, 2003.

3. It is the say of the applicant that at the relevant point of time, he was discharging duties as Addl. Public Prosecutor and he was entrusted the aforesaid Sessions Case to conduct it on behalf of the State. It is further stated that he was working as Addl. Public Prosecutor for the last six years and during that period, he had put in sincere efforts to conduct the cases on behalf of the State to the best of his ability and efficiecy. His grievance is that in the present case, the learned Trial Judge, has made certain remarks against him which tend to tarnish his image as a sincere Public Prosecutor. It is his say that what had transpired during the course of hearing was not properly appreciated by the learned Judge and that had led her to make observations against him in the judgment. No opportunity was afforded to the applicant before incorporating such remarks in the judgment.

4. Mr. P.K. Jani learned advocate appearing for the applicant has taken me through the offending remarks that have been annexed as annexure "C" to Criminal Misc. Application no.5602 of 2003 at page 5 of the compilation. On going through the record and in particular, the portion of the judgment reflecting the facts and circumstances in which these remarks have been made by the learned Judge, it appears that the learned Judge could have avoided making such remarks against an experienced Prosecutor. It is true that at the time of said hearing, as can be seen from the judgment, at some point of time, the learned Addl. Public Prosecutor was not equipped with the case papers. However, the learned Judge has given no opportunity to the learned Addl. Public Prosecutor i.e. the applicant to explain in what circumstances he was not having the papers of the case on that day. It is quite possible that if on that opportunity was given to him, he could have explained the true facts. It is a matter of common knowledge that once in a while such lapse is committed by many learned advocates, but that does not mean that they are careless and totally indifferent to their duties. Further that, when the case is being decided on its merits, and in the course of the judgment if the learned Trial Court finds

some lacuna on the part of the prosecution, no motive can be attributed as has been done by the learned Judge in this case to the learned Addl. Public Prosecutor and that too without granting any opportunity of hearing. It is not to be forgotten that the Addl. Public Prosecutor is supposed to discharge his duties dispassionately without favouring any side and to represent the facts as they are. He is not personally interested in any case. It is, therefore, not proper while delivering the judgment to make such comments which would spoil the image of a Public Prosecutor. For these reasons, in my opinion, the remarks that have been made in the following paragraphs are required to be expunged and they are hereby ordered to be expunged from the record of that case and they are treated as non existant.

(Gujarati version)

This application is, therefore, allowed. Rule is made absolute accordingly.

[AKSHAY H. MEHTA, J.]

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